

the Office of Management and Budget under Control Numbers 0704–0229, 0704–0245, and 0704–0259. This rule does not impose information collection requirements beyond those already required by existing DFARS representations and certifications.

**List of Subjects in 48 CFR Parts 204, 212, and 252**

Government procurement.

**Michele P. Peterson,**  
Editor, Defense Acquisition Regulations System.

■ Therefore, 48 CFR parts 204, 212, and 252 are amended as follows:

■ 1. The authority citation for 48 CFR parts 204, 212, and 252 continues to read as follows:

**Authority:** 41 U.S.C. 421 and 48 CFR Chapter 1.

**PART 204—ADMINISTRATIVE MATTERS**

■ 2. Subpart 204.12 is added to read as follows:

**Subpart 204.12—Annual Representations and Certifications**

**204.1202 Solicitation provision and contract clause.**

When using the provision at FAR 52.204–8, Annual Representations and Certifications—

(1) Use the provision with 252.204–7007, Alternate A, Annual Representations and Certifications; and

(2) Do not include the following representations and certifications:

(i) 252.209–7005, Reserve Officer Training Corps and Military Recruiting on Campus.

(ii) 252.212–7000, Offeror Representations and Certifications—Commercial Items.

(iii) 252.216–7003, Economic Price Adjustment—Wage Rates or Material Prices Controlled by a Foreign Government.

(iv) 252.225–7000, Buy American Act—Balance of Payments Program Certificate.

(v) 252.225–7020, Trade Agreements Certificate.

(vi) 252.225–7031, Secondary Arab Boycott of Israel.

(vii) 252.225–7035, Buy American Act—Free Trade Agreements—Balance of Payments Program Certificate.

(viii) 252.225–7042, Authorization to Perform.

(ix) 252.229–7003, Tax Exemptions (Italy).

(x) 252.229–7005, Tax Exemptions (Spain).

(xi) 252.239–7011, Special Construction and Equipment Charges.

(xii) 252.247–7022, Representation of Extent of Transportation by Sea.

**PART 212—ACQUISITION OF COMMERCIAL ITEMS**

■ 3. Section 212.301 is amended by adding paragraph (f) introductory text to read as follows:

**212.301 Solicitation provisions and contract clauses for the acquisition of commercial items.**

(f) The following additional provisions and clauses apply to DoD solicitations and contracts for the acquisition of commercial items. If the offeror has completed the provisions listed in paragraph (f)(i) or (ii) of this section electronically as part of its annual representations and certifications at <https://orca.bpn.gov>, the contracting officer may consider this information instead of requiring the

offeror to complete these provisions for a particular solicitation.

\* \* \* \* \*

**PART 252—SOLICITATION PROVISIONS AND CONTRACT CLAUSES**

■ 4. Section 252.204–7007 is added to read as follows:

**252.204–7007 Alternate A, Annual Representations and Certifications.**

Alternate A, Annual Representations and Certifications (JAN 2008)

As prescribed in 204.1202, substitute the following paragraph (c) for paragraph (c) of the provision at FAR 52.204–8:

(c) The offeror has completed the annual representations and certifications electronically via the Online Representations and Certifications Application (ORCA) Web site at <https://orca.bpn.gov>. After reviewing the ORCA database information, the offeror verifies by submission of the offer that the representations and certifications currently posted electronically have been entered or updated within the last 12 months, are current, accurate, complete, and applicable to this solicitation (including the business size standard applicable to the NAICS code referenced for this solicitation), as of the date of this offer, and are incorporated in this offer by reference (see FAR 4.1201); except for the changes identified below [*offeror to insert changes, identifying change by clause number, title, date*]. These amended representation(s) and/or certification(s) are also incorporated in this offer and are current, accurate, and complete as of the date of this offer.

FAR/DFARS clause No.	Title	Date	Change
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Any changes provided by the offeror are applicable to this solicitation only, and do not result in an update to the representations and certifications posted on ORCA.

[FR Doc. E8–177 Filed 1–9–08; 8:45 am]

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**DEPARTMENT OF DEFENSE**

**Defense Acquisition Regulations System**

**48 CFR Parts 207, 209, 234, 235, and 252**

**RIN 0750–AF80**

**Defense Federal Acquisition Regulation Supplement; Lead System Integrators (DFARS Case 2006–D051)**

**AGENCY:** Defense Acquisition Regulations System, Department of Defense (DoD).

**ACTION:** Interim rule with request for comments.

**SUMMARY:** DoD has issued an interim rule amending the Defense Federal Acquisition Regulation Supplement (DFARS) to implement Section 807 of the National Defense Authorization Act for Fiscal Year 2007. Section 807 places limitations on contractors acting as lead system integrators in the acquisition of major DoD systems. Such contractors may have no direct financial interest in the development or construction of any individual system or element of any

system of systems unless an exception applies.

**DATES:** *Effective date:* January 10, 2008.

*Comment date:* Comments on the interim rule should be submitted in writing to the address shown below on or before March 10, 2008, to be considered in the formation of the final rule.

**ADDRESSES:** You may submit comments, identified by DFARS Case 2006–D051, using any of the following methods:

- *Federal eRulemaking Portal:* <http://www.regulations.gov>. Follow the instructions for submitting comments.

- *E-mail:* [dfars@osd.mil](mailto:dfars@osd.mil). Include DFARS Case 2006–D051 in the subject line of the message.

- *Fax:* 703–602–7887.

- *Mail:* Defense Acquisition Regulations System, Attn: Mr. Michael Benavides, OUSD(AT&L)DPAP(DARS), IMD 3D139, 3062 Defense Pentagon, Washington, DC 20301–3062.

- *Hand Delivery/Courier:* Defense Acquisition Regulations System, Crystal Square 4, Suite 200A, 241 18th Street, Arlington, VA 22202–3402.

Comments received generally will be posted without change to <http://www.regulations.gov>, including any personal information provided.

**FOR FURTHER INFORMATION CONTACT:** Mr. Michael Benavides, 703–602–1302.

**SUPPLEMENTARY INFORMATION:**

**A. Background**

This interim rule implements Section 807 of the National Defense Authorization Act for Fiscal Year 2007 (Pub. L. 109–364). Section 807 provides that, with certain exceptions, no entity performing lead system integrator functions in the acquisition of a major system by DoD may have any direct financial interest in the development or construction of any individual system or element of any system of systems. The interim rule adds DFARS policy, and a corresponding solicitation provision and contract clause, to implement the requirements of Section 807 of Public Law 109–364.

This rule was not subject to Office of Management and Budget review under Executive Order 12866, dated September 30, 1993.

**B. Regulatory Flexibility Act**

DoD does not expect this rule to have a significant economic impact on a substantial number of small entities within the meaning of the Regulatory Flexibility Act, 5 U.S.C. 601, *et seq.*, because application of the rule is limited to contractors performing lead system integrator functions for major DoD systems. Therefore, DoD has not

performed an initial regulatory flexibility analysis. DoD invites comments from small businesses and other interested parties. DoD also will consider comments from small entities concerning the affected DFARS subparts in accordance with 5 U.S.C. 610. Such comments should be submitted separately and should cite DFARS Case 2006–D051.

**C. Paperwork Reduction Act**

The Paperwork Reduction Act does not apply, because the rule does not impose any information collection requirements that require the approval of the Office of Management and Budget under 44 U.S.C. 3501, *et seq.*

**D. Determination To Issue an Interim Rule**

A determination has been made under the authority of the Secretary of Defense that urgent and compelling reasons exist to publish an interim rule prior to affording the public an opportunity to comment. This interim rule implements Section 807 of the National Defense Authorization Act for Fiscal Year 2007 (Pub. L. 109–364). Section 807 places limitations on contractors acting as lead system integrators in the acquisition of major DoD systems. Such contractors may have no direct financial interest in the development or construction of any individual system or element of any system of systems unless an exception applies. Section 807 requires DoD to update the acquisition regulations to address these limitations. Comments received in response to this interim rule will be considered in the formation of the final rule.

**List of Subjects in 48 CFR Parts 207, 209, 234, 235, and 252**

Government procurement.

**Michele P. Peterson,**

*Editor, Defense Acquisition Regulations System.*

■ Therefore, 48 CFR parts 207, 209, 234, 235, and 252 are amended as follows:

■ 1. The authority citation for 48 CFR parts 207, 209, 234, 235, and 252 continues to read as follows:

**Authority:** 41 U.S.C. 421 and 48 CFR Chapter 1.

**PART 207—ACQUISITION PLANNING**

■ 2. Section 207.106 is amended by adding paragraph (S–71) to read as follows:

**207.106 Additional requirements for major systems.**

\* \* \* \* \*

(S–71) See 209.570 for policy applicable to acquisition strategies that

consider the use of lead system integrators.

**PART 209—CONTRACTOR QUALIFICATIONS**

■ 3. Subpart 209.5 is added to read as follows:

**Subpart 209.5—Organizational and Consultant Conflicts of Interest**

Sec.

209.570 Limitations on contractors acting as lead system integrators.

209.570–1 Definitions.

209.570–2 Policy.

209.570–3 Procedures.

209.570–4 Solicitation provision and contract clause.

**Subpart 209.5—Organizational and Consultant Conflicts of Interest**

**209.570 Limitations on contractors acting as lead system integrators.**

**209.570–1 Definitions.**

*Lead system integrator*, as used in this section, is defined in the clause at 252.209–7007, Prohibited Financial Interests for Lead System Integrators. See PGI 209.570–1 for additional information.

**209.570–2 Policy.**

(a) Except as provided in paragraph (b) of this subsection, 10 U.S.C. 2410p prohibits any entity performing lead system integrator functions in the acquisition of a major system by DoD from having any direct financial interest in the development or construction of any individual system or element of any system of systems.

(b) The prohibition in paragraph (a) of this subsection does not apply if—

(1) The Secretary of Defense certifies to the Committees on Armed Services of the Senate and the House of Representatives that—

(i) The entity was selected by DoD as a contractor to develop or construct the system or element concerned through the use of competitive procedures; and

(ii) DoD took appropriate steps to prevent any organizational conflict of interest in the selection process; or

(2) The entity was selected by a subcontractor to serve as a lower-tier subcontractor, through a process over which the entity exercised no control.

**209.570–3 Procedures.**

In making a responsibility determination before awarding a contract for the acquisition of a major system, the contracting officer shall—

(a) Determine whether the prospective contractor meets the definition of “lead system integrator”;

(b) Consider all information regarding the prospective contractor’s direct

financial interests in view of the prohibition at 209.570-2(a); and

(c) Follow the procedures at PGI 209.570-3.

**209.570-4 Solicitation provision and contract clause.**

(a) Use the provision at 252.209-7006, Limitations on Contractors Acting as Lead System Integrators, in solicitations for the acquisition of a major system when the acquisition strategy envisions the use of a lead system integrator.

(b) Use the clause at 252.209-7007, Prohibited Financial Interests for Lead System Integrators—

(1) In solicitations that include the provision at 252.209-7006; and

(2) In contracts when the contractor will fill the role of a lead system integrator for the acquisition of a major system.

**PART 234—MAJOR SYSTEM ACQUISITION**

■ 4. Section 234.004 is added to read as follows:

**234.004 Acquisition strategy.**

See 209.570 for policy applicable to acquisition strategies that consider the use of lead system integrators.

**PART 235—RESEARCH AND DEVELOPMENT CONTRACTING**

■ 5. Section 235.008 is added to read as follows:

**235.008 Evaluation for award.**

See 209.570 for limitations on the award of contracts to contractors acting as lead system integrators.

**PART 252—SOLICITATION PROVISIONS AND CONTRACT CLAUSES**

■ 6. Sections 252.209-7006 and 252.209-7007 are added to read as follows:

**252.209-7006 Limitations on Contractors Acting as Lead System Integrators.**

As prescribed in 209.570-4(a), use the following provision:

Limitations on Contractors Acting As Lead System Integrators (JAN 2008)

(a) *Definitions.* *Lead system integrator, lead system integrator with system responsibility, and lead system integrator without system responsibility,* as used in this provision, have the meanings given in the clause of this solicitation entitled “Prohibited Financial Interests for Lead System Integrators” (DFARS 252.209-7007).

(b) *General.* Unless an exception is granted, no contractor performing lead

system integrator functions in the acquisition of a major system by the Department of Defense may have any direct financial interest in the development or construction of any individual system or element of any system of systems.

(c) *Representations.* (1) The offeror represents that it does

[ ] does not [ ] propose to perform this contract as a lead system integrator with system responsibility.

(2) The offeror represents that it does [ ] does not [ ] propose to perform this contract as a lead system integrator without system responsibility.

(3) If the offeror answered in the affirmative in paragraph (c)(1) or (2) of this provision, the offeror represents that it does [ ] does not [ ] have any direct financial interest as described in paragraph (b) of this provision with respect to the system(s), subsystem(s), system of systems, or services described in this solicitation.

(d) If the offeror answered in the affirmative in paragraph (c)(3) of this provision, the offeror should contact the Contracting Officer for guidance on the possibility of submitting a mitigation plan and/or requesting an exception.

(e) If the offeror does have a direct financial interest, the offeror may be prohibited from receiving an award under this solicitation, unless the offeror submits to the Contracting Officer appropriate evidence that the offeror was selected by a subcontractor to serve as a lower-tier subcontractor through a process over which the offeror exercised no control.

(f) This provision implements the requirements of 10 U.S.C. 2410p, as added by section 807 of the National Defense Authorization Act for Fiscal Year 2007 (Pub. L. 109-364).

(End of provision)

**252.209-7007 Prohibited Financial Interests for Lead System Integrators.**

As prescribed in 209.570-4(b), use the following clause:

Prohibited Financial Interests for Lead System Integrators (JAN 2008)

(a) *Definitions.* As used in this clause—

(1) *Lead system integrator* includes *lead system integrator with system responsibility* and *lead system integrator without system responsibility.*

(2) *Lead system integrator with system responsibility* means a prime contractor for the development or production of a major system if the prime contractor is not expected at the time of award, as determined by the Contracting Officer, to perform a substantial portion of the

work on the system and the major subsystems.

(3) *Lead system integrator without system responsibility* means a contractor under a contract for the procurement of services whose primary purpose is to perform acquisition functions closely associated with inherently governmental functions (see section 7.503(d) of the Federal Acquisition Regulation) with regard to the development or production of a major system.

(b) *Limitations.* The Contracting Officer has determined that the Contractor meets the definition of lead system integrator with [ ] without [ ] system responsibility. Unless an exception is granted, the Contractor shall not have any direct financial interest in the development or construction of any individual system or element of any system of systems while performing lead system integrator functions in the acquisition of a major system by the Department of Defense under this contract.

(c) *Agreement.* The Contractor agrees that during performance of this contract it will not acquire any direct financial interest as described in paragraph (b) of this clause, or, if it does acquire or plan to acquire such interest, it will immediately notify the Contracting Officer. The Contractor further agrees to provide to the Contracting Officer all relevant information regarding the change in financial interests so that the Contracting Officer can determine whether an exception applies or whether the Contractor will be allowed to continue performance on this contract. If a direct financial interest cannot be avoided, eliminated, or mitigated to the Contracting Officer's satisfaction, the Contracting Officer may terminate this contract for default for the Contractor's material failure to comply with the terms and conditions of award or may take other remedial measures as appropriate in the Contracting Officer's sole discretion.

(d) Notwithstanding any other clause of this contract, if the Contracting Officer determines that the Contractor misrepresented its financial interests at the time of award or has violated the agreement in paragraph (c) of this clause, the Government may terminate this contract for default for the Contractor's material failure to comply with the terms and conditions of award or may take other remedial measures as appropriate in the Contracting Officer's sole discretion.

(e) This clause implements the requirements of 10 U.S.C. 2410p, as added by section 807 of the National

Defense Authorization Act for Fiscal Year 2007 (Pub. L. 109-364).

(End of clause)

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## DEPARTMENT OF DEFENSE

### Defense Acquisition Regulations System

#### 48 CFR Parts 207 and 237

RIN 0750-AF87

#### Defense Federal Acquisition Regulation Supplement; Functions Exempt From Private Sector Performance (DFARS Case 2007-D019)

**AGENCY:** Defense Acquisition Regulations System, Department of Defense (DoD).

**ACTION:** Final rule.

**SUMMARY:** DoD has issued a final rule amending the Defense Federal Acquisition Regulation Supplement (DFARS) to address procedures for preparation of the written determination required by the Federal Acquisition Regulation (FAR), that none of the functions to be performed by contract are inherently governmental.

**DATES:** *Effective Date:* January 10, 2008.

**FOR FURTHER INFORMATION CONTACT:** Mr. Michael Benavides, Defense Acquisition Regulations System, OUSD (AT&L) DPAP(DARS), IMD 3D139, 3062 Defense Pentagon, Washington, DC 20301-3062. Telephone 703-602-1302; facsimile 703-602-7887. Please cite DFARS Case 2007-D019.

#### SUPPLEMENTARY INFORMATION:

##### A. Background

This final rule amends the DFARS to address procedures for preparation of the written determination required by FAR 7.503(e), that none of the functions to be performed by contract are inherently governmental. The rule requires DoD personnel to prepare the determination using DoD Instruction 1100.22, Guidance for Determining Workforce Mix, and to also include a determination that none of the functions to be performed are exempt from private sector performance, as addressed in DoD Instruction 1100.22.

This rule was not subject to Office of Management and Budget review under Executive Order 12866, dated September 30, 1993.

##### B. Regulatory Flexibility Act

This rule will not have a significant cost or administrative impact on

contractors or offerors, or a significant effect beyond the internal operating procedures of DoD. Therefore, publication for public comment under 41 U.S.C. 418b is not required. However, DoD will consider comments from small entities concerning the affected DFARS subparts in accordance with 5 U.S.C. 610. Such comments should cite DFARS Case 2007-D019.

##### C. Paperwork Reduction Act

The Paperwork Reduction Act does not apply, because the rule does not impose any information collection requirements that require the approval of the Office of Management and Budget under 44 U.S.C. 3501, *et seq.*

#### List of Subjects in 48 CFR Parts 207 and 237

Government procurement.

**Michele P. Peterson,**

*Editor, Defense Acquisition Regulations System.*

■ Therefore, 48 CFR parts 207 and 237 are amended as follows:

■ 1. The authority citation for 48 CFR parts 207 and 237 continues to read as follows:

**Authority:** 41 U.S.C. 421 and 48 CFR Chapter 1.

#### PART 207—ACQUISITION PLANNING

■ 2. Section 207.503 is amended by adding paragraph (e) to read as follows:

##### 207.503 Policy.

(e) The written determination required by FAR 7.503(e), that none of the functions to be performed by contract are inherently governmental—

(i) Shall be prepared using DoD Instruction 1100.22, Guidance for Determining Workforce Mix; and

(ii) Shall include a determination that none of the functions to be performed are exempt from private sector performance, as addressed in DoD Instruction 1100.22.

\* \* \* \* \*

#### PART 237—SERVICE CONTRACTING

■ 3. Section 237.102 is added to read as follows:

##### 237.102 Policy.

(c) In addition to the prohibition on award of contracts for the performance of inherently governmental functions, contracting officers shall not award contracts for functions that are exempt from private sector performance. See 207.503(e) for the associated documentation requirement.

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## DEPARTMENT OF DEFENSE

### Defense Acquisition Regulations System

#### 48 CFR Parts 209, 217, and 246

RIN 0750-AF86

#### Defense Federal Acquisition Regulation Supplement; Ship Critical Safety Items (DFARS Case 2007-D016)

**AGENCY:** Defense Acquisition Regulations System, Department of Defense (DoD).

**ACTION:** Interim rule with request for comments.

**SUMMARY:** DoD has issued an interim rule amending the Defense Federal Acquisition Regulation Supplement (DFARS) to implement Section 130 of the National Defense Authorization Act for Fiscal Year 2007. Section 130 requires DoD to establish a quality control policy for the procurement, modification, repair, and overhaul of ship critical safety items.

**DATES:** *Effective date:* January 10, 2008.

*Comment date:* Comments on the interim rule should be submitted in writing to the address shown below on or before March 10, 2008, to be considered in the formation of the final rule.

**ADDRESSES:** You may submit comments, identified by DFARS Case 2007-D016, using any of the following methods:

- *Federal eRulemaking Portal:* <http://www.regulations.gov>. Follow the instructions for submitting comments.
- *E-mail:* [dfars@osd.mil](mailto:dfars@osd.mil). Include DFARS Case 2007-D016 in the subject line of the message.
- *Fax:* 703-602-7887.
- *Mail:* Defense Acquisition Regulations System, Attn: Mr. Michael Benavides, OUSD (AT&L) DPAP (DARS), IMD 3D139, 3062 Defense Pentagon, Washington, DC 20301-3062.
- *Hand Delivery/Courier:* Defense Acquisition Regulations System, Crystal Square 4, Suite 200A, 241 18th Street, Arlington, VA 22202-3402.

Comments received generally will be posted without change to <http://www.regulations.gov>, including any personal information provided.

**FOR FURTHER INFORMATION CONTACT:** Mr. Michael Benavides, 703-602-1302.

#### SUPPLEMENTARY INFORMATION:

##### A. Background

This interim rule implements Section 130 of the National Defense Authorization Act for Fiscal Year 2007 (Pub. L. 109-364). Section 130 requires DoD to prescribe in regulations a quality